

Original

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION**

**FILED
STATESVILLE, NC.**

MICHAEL J. GARVEY,

AUG 10 2017

Plaintiff,

**U.S. District Court
Western District of N.C.**

v.

CASE NO. 5:16-cv-00209-RLV

**SETERUS, INC.; SUBSTITUTE TRUSTEES
SERVICES, INC.; HUTCHENS LAW FIRM, LP;
LACEY M. MOORE; CHRISTOPHER T.
SALYER; SHIANN SCHMIDT; SHAPIRO &
INGLE, LLP; MICHAEL JAY EMREY; KYLE
STEWART**

Defendants.

RESPONSE

Comes now Garvey, Plaintiff in the above captioned matter, drafting pro se under the ORDER of July 27, 2017 issued pursuant to Defendant Seterus, Inc.'s SECOND MOTION FOR JUDGEMENT ON THE PLEADINGS filed July 27, 2017.

1. Two conclusions must be clear to every party in the litigation, at this time:
 - A. There shall be no FDCPA litigation by Garvey in this Honorable Court;
 - B. Any attempt to influence the ORDER of 6/23/17 shall be futile and counterproductive until the Fourth Circuit Court of Appeals reviews the Courts' decisions;

2. It is ascertainable that Seterus' well qualified attorneys required over 30 days to draft and file the instant pleading after being subtly directed to do so in the 6/23/17 ORDER;

3. Garvey caused a Motion For Extension of Time to be filed July 20, 2017 in that

VERIFIED motion Garvey stated:

"Garvey's advancing age is partially responsible as well as this Honorable Courts' selective enforcement of the previous state court actions and denial of FDCPA simple requirement of Validation and VERIFICATION – a straightforward statement under "Penalty of Perjury" that the debt in question is valid. Garvey has [not] been wrong in ascertaining this simple mandate." Paragraph 3, Motion For Extension of Time, filed July 20, 2017 Docket No 39.

This Honorable Court has not responded in any manner to this Motion;

4. In direct verified opposition to paragraph 1 of Seterus' BASIS FOR RELIEF Garvey would request any evidence in all the applicable records that Garvey received any VERIFIED statements, pleadings, responses, letters or any other communication that we've VERIFIED and actually delivered to Garvey or the Courts, under "Penalty of Perjury" or under Oath.

The new plausibility standard of pleadings, decided under Ashcroft and Twombly, have been met and superseded in that every communication mailed by Garvey was mailed certified. The issue is relatively simple, did Seterus send, mail, deliver any verified (under Penalty of Perjury) communication to Garvey or the Courts. The

documentation that was received was not even signed.

The obfuscation tactic of submitting resultant forged copies of the different mortgage notes or deeds of trust in violation of forgery statutes 18USC Chapter 25, Section 484 do not meet the standards of a verified statement. Neither due computer spit-outs meet the requirements.

5. In direct opposition to paragraph 2, Basis for Relief the only communications from Se- terus demanded by Plaintiff is a validation and verification of the debt under oath pursuant to FDCPA 1692(g) - please produce one;
6. Every statement, pleading, communication made in this matter is an attempt to collect a debt by a third party debt collector without standing.
Public Law 104-29, 109 Stat. 275 (as amended) 9/30/95) states in relevant part at (b) "Ser- vicer not treated as assignee ..." Please see (f) (1) (2) (3) (4) and 15 USC 1641 (f) as well as 12 C.F.R. Section 226.39 (a) (1).
7. Based on the foregoing authority Seterus is a sub servicer, not an owner of the alleged Note and Mortgage , as they were rescinded in 2013 and are recorded in the public record and not found by the Court, and, as such, is not entitled to Standing except that of defendant. Based on the foregoing, as a sub servicer Seterus cannot be treated as an owner. There has been not facts and findings and conclusion of law showing any entity With100% of the rights to foreclose. Seterus is nothing more then a third party debt collector/interloper/defendant in this Court.
8. Also this Honorable Court should be aware of the real facts behind this FDCPA action and SCOTUS precedent.

"Deprivation of fundamental rights, even for brief periods of time constitutes irreparable injury. "Eliod V. Burns, 427 U.S. 347, 373 (1976)

Eliod. wjg 93

A recent State Court decision involving State Actors states at page 2, second paragraph:

"As a matter of law, violations of the North Carolina Constitution constitutes per se irreparable harm." 16-CVS-15607. Wake County TRO ORDER, Senior Resident Superior Court Judge, filed 12/29/16

9. The Defendants in this matter have violated Garvey's rights a minimum of eight (8) times. Seterus interjected itself into the fray and should not have been involved in the first place. When Bank of America started the illegal foreclosure Seterus was not a party. When the NC- COA opinion rendered B.O.A. defeated Seterus stepped in with similar forged documents and prevaricated affidavits. Does this Honorable Court have any idea of the magnificent miscarriage of justice this action is attempting to rectify?

10. Furthermore, Garvey will address the violative "appointment of substitute Trustee" filed in book #00431 at start page #1058 as Extrinsic material. Based on information and belief in a ruling on a 12 C motion, the court may consider pleaded allegations, exhibits attached to the complaint and matters of public record.

Found in the public record In Ashe County in the Deed of Trust and two assignment of mortgages, the one that will be the foundation for this case setting the tone for the present situation will be the one signed by Wayne Choe on April 4, 2012.

In the "Deed of Trust", in the record as an exhibit "B", Doc 24-2 , redacted and submitted by Seterus counsel, it states in pertinent part:

"Borrower is the trustor under this security instrument. (c) "Lender is Quicken Loan Inc."

Quotation mark in original certified copy" page # 0347.

"24. Substitute Trustee.

Lender may from time to time remove trustee and appoint a "SUCESSOR" trustee to any trustee appointed hereunder by an instrument recorded in the County in which this security instrument is recorded. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and all the duties conferred upon the trustee herein and by applicable law."

(emphasis added) Deed of Trust page 359.

11. First, Deborah Hooker is not the "Lender". She is not an attorney-in-fact for Quicken loan the "Lender". There is no evidence in the record she is the attorney-in-fact for Bank of America through Hutchens, et al. As "Trustor" for the alleged, as there is no evidence in record of a legitimate "Trust", Funding of the trust, assignment to the trust, no endorsement to the trust and the fundamental rights violated by "substitute trustee" not "Successor Trustee" as commanded in paragraph 24 of the deed of trust.

12. Trustor Garvey objects to their appointment in violation of paragraph 24, and proof of an actual, valid trust. Due to the significant violation North Carolina Constitution and the United States "Bill of Rights" committed with the intent to defraud by substitute trustee; It is now imperative Garvey present evidence indicating the two assignments of the Deed of Trust are attempts to defraud the Courts.

13. Pursuant to securitization loan analysis report Mers and Mers Corp., do not have standing. Their addresses seems to be questionable at 1901 E. Voorhees Street, Suite C, Danville, Il. 61834.

14. The Assignment of Mortgage and information gathered since that document was prepared indicates "Wayne Choe is a Robo signer with no authority to transfer any rights,¹ for example; (see Judicial Notice # B 2, Notes, and Wayne Choe Signature.) *mjy*

¹ See judicial Notice # A 1 A quick introduction to Robo signing. *mjy*

- On 11-1-11 Wayne Choe is Assistant Secretary to Mortgage Electronic Registration systems, Inc.
- On 1-24-12 Wayne Choe is Assistant Vice President to Bank of America
- On 4-4-12 Wayne Choe is Assistant Secretary to Mortgage Electronic Registration systems, Inc.
- On 10-4-12 Wayne Choe is Assistant Secretary to Mortgage Electronic Registration systems, Inc.

15. The Judicial Notice is not so much about the title of Wayne Choe, as it is to the four unique and different signatures used on Legal Documents. Wayne Choe is another type of "Linda Green", someone who signed Legal Documents without authority. It is noteworthy to mention Lynn Szymoniak exposing the Robo-signing, and the infamous "Linda Green" robo information. (See judicial Notice C 1) M J 21

16. This simple prevarication practice and behavior began in 2011 and has continued to present, not just by the Chow situation, but all the parties attempting to convert the property in question. By fraudulent behavior and presenting fraud on the court in several areas.

17. A Recent Case from the Montana Supreme Court had exposed this type of behavior including deception and misrepresentation which is at the root of the need to **Validate and Verify** documents of legality. Garvey and many others has suffered at the hands of those with superior knowledge of the system and they have used that leverage to take the homes of the people, the reference case is Jacobson v Bayview Loan. (see Judicial Notice #

D A) M J 21

18. At this juncture in time, 8-8-17 at 7:00 am Garvey must stop his efforts to illuminate the past proceedings in this action and mail this handwritten portion of the pleading and exhibits for word processing and delivery to this Hon. court pursuant to the time constraint imposed by the court in its most recent order.

Garvey reserves the right to amend this Response.

Respectfully submitted


Michael James Garvey
330 Walter Godbey Road
West Jefferson, NC
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MICHAEL J. GARVEY,

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Defendants.

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REQUEST FOR JUDICIAL NOTICE

COMES NOW, M. J. Garvey per the Rules of **Evidence 201 of adjudicative facts** and hereby requests this Honorable Court take Judicial Notice of

Papers and pleadings filed in this case, and certain historical documents from the Public record and in support states as follows:

- The Court may take judicial notice of official actions of the legislative, executive and judicial departments of the United States.
- The Court may take judicial notice of records of any court in this state or of any court of record of the United States.

Garvey, also moves this Court to take judicial notice of the following:

- A. Robo Document –
- B. Wayne Choe, NOTES Signatures and Titles
- C. Lynn Szymoniak and Linda Green, Robo Signer

D. Supreme Court of Montana.

**BAYVIEW LOAN SERVICING,
LLC,**
**and Charles J. Peterson, Trustee,
Defendants and Appellants.**
No. DA 15-0108.

Submitted on Briefs Dec. 9, 2015.

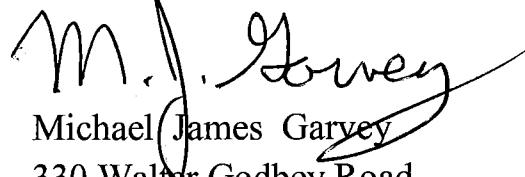
Decided May 4, 2016.

- E. Exhibit M- April 2011- Consent Order signed by all the Mers Executives, OCC and Board of Governors, FDIC, OTF and FHFA
- F. Motion for reconsideration Bankruptcy Court
- G. Land Records 1- Deed of Trust
- H. Land Record 2- Affidavit of Truth and Rescission
- I. Land Records3 - Certified copy of Assignment Wayne Choe

WHEREFORE, pursuant to Federal Rules of Evidence 201 and any other applicable evidence rules that apply Garvey moves this Honorable Court to take

judicial notice of the Information provided. Garvey further REQUEST any relief as this Honorable Court deems just and proper under the circumstances

Respectfully Submitted,


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